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**Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/524,928 03/14/00 AINSLEY

K 0132-005

EXAMINER

HM12/0213

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WARE, T

ART UNIT

PAPER NUMBER

1615  
DATE MAILED:

02/13/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

**Office Action Summary**

Application No.

09/524,928

Applicant(s)

AINSLEY, KEITH

Examiner

Todd D Ware

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 23 May 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

### **DETAILED ACTION**

Receipt of information disclosure statement filed 5-23-00 is acknowledged.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant regards as his/her invention. Evidence that claims 1-16 fail to correspond in scope with that which applicant regards as the invention can be found in Paper No. 1 filed 3-14-00. In that paper, applicant has stated that this invention is directed to a lure for deer, elk, moose, and caribou, and while the language in claims 1-2, 4, 11, and 13-16 indicates that the invention is different from what is defined in the claims because it claims a lure for any animal comprising urine from that animal species. For example, the claims include animals such as human beings, however it is submitted that the invention is not directed to a urine composition for attracting human beings. Utilization of Markush language, such as "for a designated species selected from the group consisting of deer, elk, moose, and caribou" both in the preamble and the body of the claim would overcome this rejection.

3. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 1615

Claims 1-16 utilize the transitional term "comprising," however it appears that applicant is attempting to limit the scope of the claim such that the composition contains urine collected from "only two animals." The transitional term "comprising" is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. Accordingly, as written, the scope of the claims is not limited to urine collected from two animals. It appears that "consisting essentially of" language is more appropriate as applicant may then limit the scope of the claims to the specified materials or steps that do not materially affect the basic and novel characteristics of the claimed invention. Note that should applicant amend with such language, for search and examination purposes, "consisting essentially of" will be construed as equivalent to "comprising" and that applicant has the burden of showing that the introduction of additional steps or components would materially change the characteristics of applicant's invention (MPEP 2111.03).

Claims 1-16 are indefinite as they do not define the designated species of applicant's invention. For example, the claims include animals such as human beings, however it is submitted that the invention is not directed to a urine composition for attracting human beings. Utilization of Markush language, such as "for a designated species selected from the group consisting of deer, elk, moose, and caribou" both in the preamble and the body of the claim would overcome this rejection.

***Claim Rejections - 35 USC § 102***

Art Unit: 1615

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-7, and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Collora et al (5,896,692; hereafter '692).

'692 discloses a scent lure for animals such as white tail deer, moose, or elk comprising animal urine wherein the urine is collected from more than one animal (abstract; C 2, L 1-30; claims). Please note previous statements regarding "comprising" and "consisting essentially of" language. The urine collected is from animals in estrus or animals in rut and is collected using a urine-gathering stall.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collora et al (5,896,692; hereafter '692).

'692 discloses a scent lure for animals such as white tail deer, moose, or elk comprising animal urine wherein the urine is collected from more than one animal

Art Unit: 1615

(abstract; C 2, L 1-30; claims). Please note previous statements regarding "comprising" and "consisting essentially of" language. The urine collected is from animals in estrus or animals in rut and is collected using a urine-gathering stall. '692 does not specifically state that the contemplated animals are caribou or mule deer, however it would have been obvious to one skilled in the art at the time of the invention to formulate animal scent attractants for caribou or mule deer as they belong to the same family.

8. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christenson, II (4,944,940; hereafter '940).

'940 teaches animal scent attractants comprising urine for attracting animals such as deer. '940 also teaches that the collected urine for the attractant is obtained from one individual animal. It is submitted that an animal scent attractant wherein the urine is obtained from one animal would not attract an animal differently from one wherein the urine is obtained from two animals. Stated differently, absent a demonstration of criticality, it is submitted that urine collected from two animals is not critical over urine collected from one animal.

9. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell (5,672,342; hereafter '342).

'342 teaches animal scent attractants comprising urine for attracting animals such as deer. '342 also teaches that the collected urine for the attractant is obtained from one individual animal the urine is collected using urine-gathering stalls. It is submitted that an animal scent attractant wherein the urine is obtained from one animal would not attract an animal differently from one wherein the urine is obtained from two

Art Unit: 1615

animals. Stated differently, absent a demonstration of criticality, it is submitted that urine collected from two animals is not critical over urine collected from one animal.

10. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christenson, II (4,944,940; hereafter '940) in view of Collora et al (5,896,692; hereafter '692).

'940 is relied upon for all that it teaches as stated previously. '940 does not teach a method of collecting the urine.

'692 is relied upon for all that it teaches as stated previously. More specifically, '692 is relied upon for teaching a method of collecting urine for an animal scent attractant.

Accordingly, it would have been obvious to one skilled in the art at the time of the invention to collect the urine for the animal scent attractants of '940 with the method taught in '692 with the motivation of providing an effective means for collecting urine for an animal scent attractant.

### ***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd D Ware whose telephone number is (703) 305-1700. The examiner can normally be reached on 8:30 AM - 6 PM, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on (703)308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703)

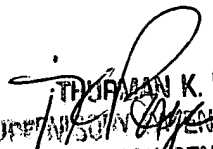
Application/Control Number: 09/524,928

Page 7

Art Unit: 1615

308-4556 for regular communications and (703) 308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

  
THOMPSON K. PAGE  
SUPERVISOR/AGENT EXAMINER  
TECHNOLOGY CENTER 1600

tw  
February 6, 2001